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# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 523

CRYSTAL CITY GLASS WORKERS' UNION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

and

## BRIEF IN SUPPORT THEREOF.

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# SUPREME COURT OF THE UNITED STATES.

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Respondent.

## PETITION FOR WRIT OF CERTIORARI

**To the United States Circuit Court of Appeals for the Eighth Circuit.**

### SUMMARY AND STATEMENT.

The proceeding in question began with a petition, subsequently amended, for investigation and certification of representatives, pursuant to Section 9-c of the National Labor Relations Act (49 Stat. 453, 28 U. S. C. A., Sec. 159), filed by the Federation of Flat Glass Workers of America, affiliated with the C. I. O.) (sometimes referred to herein as "Federation"), asserting that the appropriate bargaining unit consists of production and maintenance employees in the Pittsburgh Plate Glass Company's flat glass division, including plate and safety glass plants located at Creighton and Ford City, Pennsylvania, and Crystal City, Mis-

souri, and window glass plants located at Mt. Vernon, Ohio; Clarksburg, West Virginia, and Henryetta, Oklahoma (Rec. pp. 354-a, 354-b).

At the hearing thereon, this petitioner, the Crystal City Glass Workers' Union (sometimes referred to herein as "Crystal City Union") filed its motion to intervene in said proceeding, asserting that it represented approximately 1,500 of a total of 1,800 employees in the Company's plant at Crystal City. The Trial Examiner denied said motion on the ground that said Union was a party to said proceedings.

On January 13, 1939, the Board issued its Decision and Certification of Representatives,[1] designating all of the Company's flat glass division as the appropriate unit and certifying the Federation of Flat Glass Workers of America as the exclusive representative of all of the designated employees in said unit.

The Federation, on January 26, 1939, filed a charge that the Company had refused to bargain in accordance with the aforesaid certification, and the Board filed a complaint on February 20, 1939, charging that such refusal by the Company was an unfair labor practice. In this proceeding this petitioner was allowed to intervene.

The Board issued its Decision and Order[2] on said complaint on September 19, 1939, affirming its holding that the appropriate unit for collective bargaining is the designated employees in the Company's flat glass division, that the Federation is the exclusive representative of the employees in said unit, and that the refusal of the Company to bargain with the Federation in such unit is an unfair labor practice, and ordering the Company, upon request, to bar-

1 In re Pittsburgh Plate Glass Co., 10 NLRB 1111 (R. p. 43).

2 In re Pittsburgh Plate Glass Co., 15 NLRB 515 (R. p. 430).

gain with the Federation as a representative of all of the employees in said unit. Honorable William M. Leiserson dissented from said Decision and Order and held that the complaint against the Company should be dismissed.

The Company filed a petition to review the Decision and Order of January 13, 1939, in the United States Circuit Court of Appeals for the Eighth Circuit (Rec. p. 453), and a separate petition to review the Decision and Order of September 19, 1939 (Rec. p. 469), which petitions were consolidated with the petition for review which had been filed by petitioner herein (Rec. p. 507). Petitioner and the Company also filed in said consolidated cases petitions for leave to adduce additional evidence (Rec. pp. 536 and 540). On July 23, 1940, the Circuit Court of Appeals entered its opinion (Rec. p. 545) and decree (Rec. p. 552) denying petitioner's petitions to adduce additional evidence; holding the order of the Board valid; and granting its request for enforcement thereof.[1]

Petitioner is a Missouri corporation, organized under pro forma decree on March 3, 1938. It is a labor organization, admitting to membership employees of the Company's Crystal City plant. At the time of the hearings above mentioned it claimed a membership of 1,500 employees of a total of 1,800 at said plant.

The Company had recognized petitioner as the representative of a majority of its employees at the Crystal City plant and was negotiating a bargaining contract with petitioner in the spring of 1938, but these negotiations were suspended when, on June 17, 1938, at the instance of the Federation, a complaint, charging unfair labor practices, was filed by the Labor Board against the Company (Rec. pp. 83-84).

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1 Pittsburgh Plate Glass Co. v. NLRB, 113 Fed. (2d) 698.

The Federation of Flat Glass Workers admitted that it did not have a majority at the Crystal City plant (Rec. p. 209).

A petition bearing 1,270 signatures of employees at the Crystal City plant, requesting that this plant be considered as a separate bargaining unit, was admitted in evidence (Rec. pp. 253-254).

The complaint of June 17, 1938, was determined by stipulation between the Company, the Board and the Federation, whereby, among other things, the Company agreed to cease and desist from recognizing or dealing with petitioner as a labor organization and withdraw recognition from petitioner as the representative of its employees (Rec. p. 345). Petitioner had no notice of this proceeding, no hearing was ever had, no evidence was presented and no facts were found. Petitioner was not a party to the proceeding and did not participate in the stipulation.

At the hearings of both the certification and complaint cases, petitioner was denied the right to introduce material, competent and relevant evidence on the theory that the stipulation entered into between the Company, the Federation and the Board precluded petitioner from asserting bargaining rights for its members. Offers of proof were made and rejected (Rec. pp. 249-251 and pp. 23-24).

The petitioner's petition for leave to adduce said evidence was overruled (Rec. p. 552).

## JURISDICTION.

The jurisdiction of this Court is invoked under Section 240-a of the Judicial Code, as amended (28 U. S. C. A., Sec. 347-a). The final decision of the Circuit Court of Appeals was announced July 23, 1940, and judgment was entered on the same date. Petition for rehearing was denied August 12, 1940 (Rec. p. 571).

## STATUTE INVOLVED.

The National Labor Relations Act, approved July 5, 1935, 49 St. 449 et seq., 29 U. S. C. A., Sec. 151 et seq., particularly Sec. 9 of said Act, U. S. C. A., Sec. 159.

## QUESTIONS PRESENTED.

I.

Whether, in these proceedings, petitioner has been deprived of and denied rights guaranteed under the Constitution of the United States.

(a) Refusal to permit petitioner to present testimony was a denial of due process of law.

(b) The National Labor Relations Act contemplates a full and complete hearing on the question of representation and certification of bargaining units.

II.

Whether employees in a plant constituting an alleged appropriate unit may be validly included with other plants in a larger unit, against the wishes of a majority of such employees, in the absence of any finding that such unit is not appropriate for purposes of collective bargaining and is not contrary to the declared public policy of the act.

## REASONS FOR GRANTING THE WRIT.

1. The Circuit Court of Appeals has decided important questions of federal law which have not been, but should be, settled by this Court. The exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing as guaranteed by the National Labor Relations Act, under the facts presented by this case are matters of first impression that should be adjudicated by this Court.

2. The Circuit Court of Appeals has decided a federal question contrary to the applicable decisions of this Court. Petitioner was denied the right to adduce evidence in support of its cause by reason of an adjudication in another proceeding to which petitioner was not a party and had no opportunity to be heard.

Wherefore, your petitioner prays that a writ of certiorari issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket Nos. 449-450 and 451, Pittsburgh Plate Glass Company and Crystal City Glass Workers' Union, Petitioners, v. National Labor Relations Board, Respondent, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court be reversed by the Court, and for such further relief as to this Court may seem proper.

CRYSTAL CITY GLASS WORKERS' UNION,
By FRED J. HOFFMEISTER,
Counsel.

HENRY H. OBERSCHELP,
Of Counsel.

October 25, 1940.

# PETITIONER'S BRIEF IN SUPPORT OF ITS PETITION FOR WRIT OF CERTIORARI.

## SPECIFICATIONS OF ERROR.

I.

The Circuit Court of Appeals erred in affirming the action of the Board in determining the appropriate bargaining unit without granting this petitioner a full hearing on the question of representation.

II.

The Court erred in overlooking the fact that the act sedulously protects the rights of employees to self-organization and collective bargaining, and the Board in finding the appropriate bargaining unit should have considered the wishes of the employees at Crystal City and the ultimate effect on their organization, as well as the declared public policy of the act.

## ARGUMENT.

I.

In the complaint case, on behalf of the Crystal City Glass Workers' Union (referred to hereafter as the Union) proof was offered and received that it is a corporation organized under the laws of the State of Missouri providing for the incorporation of pro forma decree organizations; that its members are employees of Plant No. 9 of the Pittsburgh Plate Glass Company at Crystal City, Missouri; that it is a "labor organization" as that term is defined by the National Labor Relations Act, having officers and by-laws. This Union then offered to prove by competent witnesses that it had a membership of approximately 1,500 out of a

total of approximately 1,800 employees at the Crystal City plant of the Company; that the members of this Union, being a majority of all the employees at the said plant, had designated and selected it as their representative for purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment; that the members of this Union are opposed to being represented for the purposes of collective bargaining by the Federation of Flat Glass Workers of America affiliated with the C. I. O.; that the said Union is not dominated nor has its formation or administration been interfered with by the Company, nor has it received any financial or other support from the Company; that the employees at the Crystal City plant have distinct interests from the employees at other plants of the Company; that the representatives of this Union had bargained collectively for the members thereof with the Company until the Company declined to continue such bargaining in view of a complaint filed by the Federation of Flat Glass Workers before the Board in the Fourteenth Region in Case C-778, to which proceeding this Union was not a party, and that since the stipulation entered into between the Board, the Federation of Flat Glass Workers of America and the Company in that case on July 22, 1938, and since the certification of the Federation of Flat Glass Workers of America as the representative for collective bargaining for the employees at all of the flat glass plants of the Company on January 13, 1939, in Case No. R-1058 of the Board, the membership of this Union has increased in numbers (Rec. pp. 23-24).

Objection on the part of the Federation of Flat Glass Workers of America was sustained to the admission of this evidence.

Exceptions to this ruling were timely and specifically read into the record.

In the representation case, a similar offer of proof, though not as exhaustive, was made and was also denied (R. pp. 249-250). In that case the Trial Examiner ruled that the Union was a party to the proceeding, and in the complaint case the Union was permitted to intervene, but in neither proceeding was it accorded an opportunity to be heard and to present evidence on the issues involved.

The chief ground of the Federation's objection related to a proceeding which was instituted by it against the Company in the Fourteenth Region at St. Louis, Missouri, being Case No. C-778, decided September 22, 1938, entitled "In the Matter of Pittsburgh Plate Glass Company, Works No. 9, and Federation of Flat Glass Workers of America, affiliated with the C. I. O.," reported in 8 N. L. R. B. 149. This proceeding was determined by a stipulation in which, among other things, the Pittsburgh Plate Glass Company agreed to cease and desist from recognizing or dealing with the Crystal City Glass Workers Union as a labor organization and to withdraw recognition from said Union as the representative of its employees. No hearing was ever had, no evidence was presented and no facts were found. The Crystal City Glass Workers Union had no notice, was not a party to the proceeding, and it was not a party to the stipulation. It had no opportunity to be heard and could not consent or object to the provisions of the stipulation.

The Board, in affirming the trial examiner, said, in effect, that even if this evidence had been allowed to go into the record and was accepted as true, the Board would not alter its decision as to what constituted the appropriate bargaining unit; hence, the petitioner had not been prejudiced by the rulings of the trial examiner. Such a ruling is arbitrary. The rules and regulations of the Board, Article III, Section 5, entitled, "Procedure Under Section 9 (c) of the Act for the Investigation and Certification of Representatives," contains a mandatory direction that "It shall

be the duty of the Trial Examiner to inquire fully into the question of representation." The evidence submitted was material on the question of representation, and the Board should not be allowed to say, in derogation of its own rules and regulations, that even if it had considered such testimony it would not change its decision. If this evidence was admissible, petitioner was entitled to its benefit and to bring it before this Court as a part of its record.

The Supreme Court of the United States, in the case of **Morgan et al. v. United States et al.**, 304 U. S. 1, l. c. pp. 14-15, refers to a full, fair and open hearing before administrative agencies as an "inexorable safeguard," and says that in equipping those who administer such agencies with extraordinary powers, congress explicitly recognized and emphasized this requirement by making their action depend upon a "full hearing."

Furthermore, the exclusion of this evidence offered on behalf of the petitioner, deprived it of its constitutional right, that of due process of law. Whatever was done in the proceeding which was instituted and settled before the Fourteenth Regional Board could have no binding effect on the petitioner. It is an elementary principle of constitutional law that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that Court has no jurisdiction do not constitute due process of law. The Union has never been accorded a hearing, but has been condemned, nevertheless.

> "That to condemn without a hearing is repugnant to the due process clause of the fourteenth amendment needs nothing but statement. Every man is entitled to his day in court before his rights can be finally disposed of, and he cannot be divested of this right by any act of the legislature." 12 C. J. 1234.

Without giving the Union an opportunity to be heard on these issues the Board could not validly and fairly

determine any appropriate unit in the Crystal City Plant No. 9, or certify any representative for collective bargaining for the employees at that plant.

II.

The Court, in its opinion, declared that, "The public interest, as well as that of the various groups of employees of the Company, was to be considered, and the question as to what bargaining unit would best effectuate the purposes of the Act and prevent obstructions to interstate commerce by encouraging collective bargaining and protecting its exercise was a debatable question to be determined by the Board."

But the Board could only determine this question from the facts of this particular case, as applied to the standards imposed by Congress in the act itself.

In the case of **National Labor Relations Board v. Carlisle Lumber Co.**, 99 F. (2), l. c. 537, it is said that "the real purpose of the statute was to deal with obstructions affecting commerce and that such purpose must be controlling in the construction of the act." Keeping that purpose in mind as pertaining to the facts in this case, there is nothing in the Board's decision to indicate that there would be any effect on commerce, irrespective whom the bargaining representative might be. Certainly there is nothing in the Board's decision which indicates that commerce might be obstructed if this petitioner should be designated the bargaining unit. On the other hand, the evidence showed that the history of collective bargaining at the various plants has been carried on successfully in the past and there is nothing to indicate or anticipate failure in this respect if petitioner was designated the bargaining unit.

Petitioner's members are entitled to the protection of the act; it encourages collective bargaining by protecting

the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. **(National Licorice Co. v. National Labor Relations Board**, 60 S. Ct. 569, l. c. 576). In this connection the wishes of the employees are an important consideration. And this is especially true in situations like the present, where it becomes the deciding factor.

In the case of **Allied Laboratories, Inc.**, 23 N. L. R. B. 14 (April 25, 1940), the Board, in ordering an election of representatives under a set of facts not unlike the instant proceeding, made the following declaration:

> "From the foregoing it appears that the two plants might properly be considered either as two separate bargaining units or as a single unit. Under the circumstances we will be guided by the desires of the employees themselves. Since the record is not sufficiently clear as to the employees' wishes, elections are necessary to make this determination."

To the same effect is the decision of the Board in the case of **Globe Machine & Stamping Co.**, 3 N. L. R. B. No. 25, in which the Board said:

> "In such a case, where the considerations are so evenly balanced, the determining factor is the desire of the men themselves."

Petitioner contends that the wishes of the employees at the Crystal City Plant is the deciding factor in the selection of the appropriate bargaining unit for that plant, and to ignore such wishes is unfair, unjust, contrary to the act and arbitrary.

## CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

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